IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.242 OF 1994

Smt.Akkatai Appa Havale
(since deceased through L.Rs.)

1/2 Balu Appa Havale
1/3 Babasaheb Appa Havale
1/4 Chandakant Appa Havale
1/5 Smt.Housabai Nabhiraj Desai

2. Balu Appa Havale
3. Babasaheb Appa Havale
4. Chandakant Appa Havale
5. Smt.Housabai Nabhiraj Desai ...Appellants

vs.

1.Raosaheb Sahebrao Deshmukh
2.Maharashtra State Road
Transport Corporation
3.Internal Insurance Fund
4.The New India Assurance
Co.Ltd. ...Respondents

Mr.Tejpal Ingale for the Appellants
Mr.C.M.Lokesh i/b Mr.G.S.Hegde for Respondent No.2
Mr.S.R.Singh for Respondent No.4

CORAM: A.S.OKA,J.
DATE : DECEMBER 10,2007.

ORAL JUDGMENT:

1. Heard Advocates for the parties. The Appeal is preferred by the original claimants taking an exception to the Judgment and Award made under section 110-A of the Motor Vehicles Act,1939. The claim for compensation has been made on account of demise of one Raosaheb Appa Havale who died in an accident and the age of the deceased was 25 years at the time of his death. The claim was made by the Appellant no.1 who is the mother of the deceased. Second to fourth Appellants who are also the claimants are the brothers of the deceased and fifth Respondent is the sister of the deceased.

2. The Tribunal awarded total compensation of Rs.51,600/- to the Appellants with interest thereon at the rate of 12% p.a..

3. The submission of the learned Advocate for the Appellants is that there was an evidence on record to show that the income of the deceased was Rs.1500/-p.m. He pointed out that there was evidence on record in the form of deposition of the Appellant No.4 in which he deposed that the deceased was in the business of sale of milk and flowers. He submitted that there was sufficient evidence on record to show that the income of the deceased was about Rs.1500/-. He submitted that the tribunal has committed an error by proceeding on an erroneous assumption that the income of the deceased was Rs.500/- p.m. He, therefore, submitted that the Appellants were entitled to substantial enhancement.

4. I have given careful consideration to the submissions made by the learned Advocate for the Appellants. The tribunal has taken the income of the deceased at Rs.500/- p.m. The tribunal has referred to the evidence of Appellant No.4 Chandrakant Appa Havale. On the basis of the said evidence, the tribunal has noted that the deceased was to get married in a short time. Considering the fact that the deceased was likely to get married and considering the fact that the age of the first Appellant-mother was found to be 64 years, the tribunal has applied multiplier of 16. Dependency for the first year is taken at Rs.3600/- and for the subsequent years

it is taken as 2400/- p.a. considering the immediate prospects of the marriage of the deceased.

5. Though the first claimant had come out with a case that her age was 55 years at the time of filing the claim, considering the evidence of her daughter, the age of the first Appellant can be safely taken to about 64 years.

6. The tribunal has referred to the claim made in the claim petition that the monthly income of the deceased was Rs.1200/- p.m. The tribunal has noted that an improvement was made by the claimants at the time of leading the evidence by contending that his monthly income was Rs.1500/-. A case made out by the Appellants in the evidence that the deceased was earning Rs.1500/- p.m. by selling milk and flowers. There was nothing on record to show that the Appellant was earning income by selling milk. The other case made out by the Appellants in their evidence that the deceased use to grow flower bearing plants in their lands and the deceased use to sell it to the flower merchants at Icchalkaranji. The witness deposed that the family members of the witness used to get Rs.20/- per day by selling flowers to deceased Raosaheb. Income of Rs.20/- per day was the income of their family as per the evidence of Appellant No.4 and it cannot be obviously the income of the deceased. At the time of filing the claim petition, in fact the claimant Nos.2 and 3 are shown in the application as agriculturists. The Appellant Nos.5/claimant no.5 is the married sister of the deceased. Considering the

age as disclosed in the application the tribunal rightly found that the age of the first Appellant was more that 55 years.

7. In the circumstance, the dependency of the first Appellant will have to be considered. Even assuming that the deceased was earning higher income by no stretch of imagination the multiplier of 16 could have been taken by the tribunal as the age of the first Appellant was more than 60 years. In fact, the multiplier could not have been more than 6. Therefore, even assuming that the income of the deceased can be taken as the minimum income as per table of the income in the structured formula, the multiplier will have to be reduced substantially and therefore there will not be any difference in the ultimate amount of compensation of Rs.39,300/- on account of loss of dependency.

8. The other claim made out by the Appellants was on account of the amounts spent on account of hospitalisation, taxi charges and cremation. A sum of Rs.5,000/- has been granted on account of expenditure incurred by the deceased when the deceased was hospitalised. A sum of Rs.1000/- on account of taxi charges, a sum of Rs.4,000/- on account of expenditure incurred by the persons who attended him and Rs.2000/- on account of funeral expenditure has been granted by the tribunal.

9. Considering the facts and circumstances of the case, compensation awarded is proper. Appeal is accordingly

dismissed with no order as to costs.

JUDGE